

Shelf registration statements
General Order 82-1

May 12, 1982

Pursuant to the authority granted to him by Chapter 32, of the *West Virginia Code* 1931, as amended ("the West Virginia Uniform Securities Act", hereinafter sometimes referred to as the "Act"), and particularly Chapter 32, Article 4, Section 412 of the Act, the Commissioner of Securities ("Commissioner") has reviewed the United States Securities and Exchange Commission's ("SEC") recently adopted Rule 415, 17 C.F.R. §230.415.

Pursuant to said review, the Commissioner is of the opinion and finds as follows:

Findings of Fact

1. The SEC adopted Rule 415 under the Securities Act of 1933, 15 U.S.C. §77a, on February 24, 1982.
2. Rule 415 prescribes procedures by which debt and equity securities may be registered with the SEC for sale on a delayed or continuous basis thereafter, pursuant to a "shelf registration".
3. Rule 415 is designed to provide registrants with greater flexibility in timing their financial needs.
4. Several other states have given notice of their intention to adopt a policy with respect to Rule 415 filings.
5. This Order is necessary and appropriate in the public interest.

Conclusions of Law

1. Chapter 32, Article 4, Section 412(b) of the Act contemplates that the Commissioner may cooperate with securities administrators in other States and the SEC with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of registration statements, wherever practical.

2. The Act's registration provision contained in Chapter 32, Article 3, Sections 303 and 305, and the rules and regulations promulgated thereunder, are sufficiently broad in order to allow the Commissioner flexibility to adopt a policy for the filing of Rule 415 offerings.

3. The benefits of Rule 415 offerings, as contemplated by the SEC, make it advisable for the Commissioner to adopt a policy for Rule 415 filings in West Virginia.

It is, therefore, ordered that the following procedures be, and they hereby are adopted for issues which are filed by coordination in West Virginia, of debt and equity securities which are registered with the SEC for primary offering pursuant to Rule 415:

1. *Initial Filing.* On filing a shelf registration statement with the SEC pursuant to Rule 415, the registrant shall file a Uniform Application for Registration of Securities ("Form U-1") annexing the shelf registration statement.

2. *Review.* Following review, any comment, and approval, the Commissioner will issue an Order of Effectiveness declaring the shelf registration statement effective at the date and time of SEC effectiveness. If an amendment to the shelf registration statement is required prior to SEC effectiveness, such amendment must be filed with the Commissioner. After review and any comment, and approval, the Commissioner may declare the shelf registration statement effective as amended.

3. *Effectiveness of Registration.* Thereafter, for one year from the date of SEC effectiveness of the shelf registration statement, the securities registered thereby may be offered and sold on definite terms in West Virginia without any prior notification to or approval of the Commissioner so long as such offerings are effected within the maximum underwriting discount provided to the Commissioner with the shelf registration statement.

4. *Further Filings.* Following filing thereof with the SEC, the registrant must furnish copies of the Prospectus Supplements and/or Post-Effective Amendments relating to particular offerings of securities registered by the shelf registration statement to the Commissioner.

(a) *Registrants on Forms S-3 and S-2.* With respect to registrants registering on SEC Forms S-3 and S-2 [CCH FEDERAL SECURITIES LAW REPORTER ¶7151, 7141], the furnishing of Prospectus Supplements and/or Post-Effective Amendments will be merely for the purpose of keeping the Commissioner's registration files current, and no action affecting the prior registration of the securities offered thereby will be taken by the Commissioner on receipt of such Prospectus Supplements and/or Post-Effective Amendments.

(b) *Registrants on Form S-1.* With respect to registrants registering on SEC Form S-1 [CCH FEDERAL SECURITIES LAW REPORTER ¶7121], the furnishing of Prospectus Supplements will also be merely for the purpose of keeping the Commissioner's registration files current, and no action affecting the prior registration of the securities offered thereby will be taken by the Commissioner. However, the Commissioner will review Post-Effective Amendments of SEC Form S-1 registrants, and securities may not be sold thereafter by Post-Effective Amendment until the Commissioner has reaffirmed, in writing, the Order of Effectiveness with respect to the securities offered thereby.

5. *Pricing-Telegrams.* The furnishing of pricing-telegrams with respect to particular offerings of securities registered by the shelf registration statement will not be required.

6. *Underwriting Discount.* Should an offering of securities registered by the shelf registration statement be contemplated with an underwriting discount exceeding the maximum provided the Commissioner under 1. above, the new proposed underwriting discount must be approved by the Commissioner prior to sale of such offering.

7. *Re-registration.* Pursuant to Chapter 32, Article 3, Section 305(i) of the Act, the registration of the securities registered by the shelf registration statement will terminate on the date one year from the effective date thereof. Prior to such termination date, the Registrant may apply to re-register the securities for an additional year pursuant to Chapter 32, Article 3, Section 303 of the Act. Said application must be received at least ten days prior to such termination date, and the registrant may file a new Form U-1 relating to the securities registered by the Shelf

Registration Statement with the Commissioner. The application must be accompanied by the requisite filing fee. The new Form U-1 may incorporate by reference the original Form U-1 and shelf registration statement. The Commissioner will use his best efforts in reviewing the processing [of] all such new Form U-1's as expeditiously as possible in order that no lapse in the registration of securities registered by the shelf registration statement on the terms previously granted shall occur. After review, the Commissioner will, if the new Form U-1 is acceptable, issue an Order of Effective Registration with respect to the new Form U-1 and incorporated shelf registration statement as of the date of termination of the original shelf registration statement.

It is further ordered that failure to follow the aforesaid procedures for Rule 415 filings will result in the Commissioner's disallowing the registrant to effectuate shelf registration in West Virginia.

GLEN B. GAINER, JR., State Auditor of West Virginia,
Commissioner of Securities, 5-12-82.